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Assembly California Legislature

CHUCK DeVORE
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ASSEMBLYMAN, SEVENTIETH DISTRICT



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07-0027

Amdt. #2S

July 17, 2007

The Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street
Sacramento, California 95814

RECEIVED

JUL 17 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Mr. Attorney General:

This letter transmits one minor, technical amendment to the initiative I submitted July 10 for title and summary entitled the *California Energy Independence and Zero Carbon Dioxide Emission Electrical Generation Act of 2008*. The amendment appears necessary because of a 1983 U.S. Supreme Court case, "PACIFIC GAS & ELECTRIC CO. ET AL. v. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ET AL., 461 U.S. 190" which held that California could regulate some aspects of the nuclear industry based on economic, not safety concerns, the former being within the purview of the states, the latter being preempted by the Federal government. This amendment to the initiative language clarifies that there are benefits to ratepayers derived from not allowing nuclear power plant construction in areas prone to large earthquakes as well as in environmentally sensitive areas. You will find the amendment in section 25450.1, paragraph (d) which now reads: "To maximize safety and minimize environmental impacts of any new commercial nuclear powerplants that may be built in the state, seismically active and biologically sensitive areas should be excluded from site consideration. *These exclusions have the additional purpose of protecting ratepayers against construction cost overruns that are frequently incurred when building in seismically active or biologically sensitive areas.*"

Thank you for your offices' diligent review of this vital matter to the people of the State of California.

Sincerely,

Assemblyman Chuck DeVore
Seventieth District

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1. Chapter 5.5 (commencing with Section 25450) is added to Division 15 of the Public Resources Code, to read:

Chapter 5.5. CALIFORNIA ENERGY INDEPENDENCE AND ZERO CARBON DIOXIDE EMISSION
ELECTRICAL GENERATION ACT OF 2008

25450. This chapter shall be known and may be cited as the California Zero Carbon Dioxide Emission Electrical Generation Act of 2008.

25450.1 The people of the state of California hereby make the following findings and declare their purpose in enacting the Act is as follows.

(a) Modern nuclear powerplants emit zero carbon dioxide emissions and nuclear power is the only large scale and reliable electrical energy generating technology that does not directly emit carbon dioxide, which is thought to be a component of global warming or climate change. Building new nuclear powerplants will allow California to comply with the carbon emission reduction mandates while still meeting the state's growing need for electricity.

(b) More than half of California's electrical power is generated by natural gas, which is imported from other nations and states, and from coal. Natural gas prices are highly sensitive to supply and demand fluctuations, due to volatile world market conditions, and these price fluctuations can harm both consumers and business.

(c) Modern, efficient, and safe nuclear power should be considered part of the solution of improving California's ability to generate reliable, affordable, and clean energy, so as to benefit California's consumers, the economy, and the environment.

(d) To maximize safety and minimize environmental impacts of any new commercial nuclear powerplants that may be built in the state, seismically active and biologically sensitive areas should be excluded from site consideration. *These exclusions have the additional purpose of protecting ratepayers against construction cost overruns that are frequently incurred when building in seismically active or biologically sensitive areas.*

25450.2. The commission shall not certify a site for a nuclear fission thermal powerplant that has a 10-percent probability or greater in a 50-year period of exceeding a peak acceleration of 30 percent gravity (0.30g) on hard rock, or equivalent acceleration on other soils, as determined by the United States Geological Survey/California Geological Survey Probabilistic Seismic Hazards Assessment (PSHA) Model, 2002 (revised April 2003) or as updated on or after January 1, 2015.

25450.3. To reduce the environmental impact of the warm outflow of nuclear fission thermal powerplants coolant waters, the commission shall not certify a site for a nuclear fission thermal powerplant that uses a once-through nuclear reactor cooling system, if the location of the nuclear powerplant coolants outflow of that system meets either of the following criteria:

(a) The location is within five miles of a coastal area of special biological significance, as determined by the State Water Resources Control Board on or before June 1, 2003, pursuant to the California Ocean Plan adopted pursuant to Section 13170.2 of the Water Code, or as updated by the State Water Resources Control Board on or after January 1, 2015.

(b) The outflow is to a navigable river.

25450.4. When certifying a new nuclear fission thermal powerplant pursuant to this division, the commission shall consider any dry cask storage system approved by the Nuclear

Regulatory Commission to be an appropriate method for storing spent nuclear fuel and associated material.

25450.5. For purposes of taking any action with regard to approving, reviewing, or issuing a permit or other grant authority to, a new nuclear fission thermal powerplant, a state agency shall deem any dry cask storage system method approved by the Nuclear Regulatory Commission to be an acceptable method of storing spent nuclear fuel and associated material for up to 100 years.

SEC. 2. Section 25524.1 of the Public Resources Code is repealed.

~~25524.1. (a) Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant requiring the reprocessing of fuel rods, including any to which this chapter does not otherwise apply, excepting any having vested right as defined in this section, shall be permitted land use in the state or, where applicable, certified by the commission until both of the following conditions are met:~~

~~(1) The commission finds that the United States through its authorized agency has identified and approved, and there exists a technology for the construction and operation of, nuclear fuel rod reprocessing plants.~~

~~(2) The commission has reported its findings and the reasons therefore pursuant to paragraph (1) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house of the Legislature adopts by the majority vote of its~~

~~members a resolution disaffirming the findings of the commission made pursuant to paragraph (1).~~

~~(3) A resolution of disaffirmance shall set forth the reasons for the action and shall provide, to the extent possible, guidance to the commission as to an appropriate method of bringing the commission's findings into conformance with paragraph (1).~~

~~(4) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefore, to the Legislature.~~

~~(5) If the findings are that the conditions of paragraph (1) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings to the Legislature unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and takes appropriate action.~~

~~(6) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.~~

~~(b) The commission shall further find on a case-by-case basis that facilities with adequate capacity to reprocess nuclear fuel rods from a certified nuclear facility or to store that fuel if that storage is approved by an authorized agency of the United States are in actual operation or will be in operation at the time that the nuclear facility requires reprocessing or storage; provided, however, that the storage of fuel is in an offsite location to the extent necessary to provide continuous onsite full-core reserve storage capacity.~~

~~(c) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division, but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals, or authorizations for the entry or use of the land, including orders of court, which may be required may be processed and granted by the governmental entity concerned, but construction work to install permanent equipment or structures shall not commence until the requirements of this sections have been met.~~

SEC. 3. Section 25524.2 of the Public Resources Code is repealed.

~~25524.2. Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant, including any to which this chapter does not otherwise apply, but excepting those exempted herein, shall be permitted land use in the state, or where applicable, be certified by the commission until both of the following conditions have been met:~~

~~(a) — The commission finds that there has been developed and that that the United States through its authorized agency has approved and there exists a demonstrated technology or means for the disposal of high level nuclear waste.~~

~~(b) (1) The commission has reported its findings and the reasons therefore pursuant to paragraph (a) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house or the Legislature adopts by the majority vote its members a resolution disaffirming the finding of the commission made pursuant to subdivision (a).~~

~~(2) A resolution of disaffirmance shall set forth the reasons for the action and shall provide, to the extent possible, guidance to the occasion as to the appropriate method of bringing the commission's findings into conformance with subdivision (a).~~

~~(3) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefor, to the Legislature.~~

~~(4) If the finding are that the conditions of subdivision (a) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and take appropriate action.~~

~~(5) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.~~

~~(c) As used in subdivision (a), "technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposition of high-level nuclear waste. Nothing in this section requires that facilities for the application of that technology or means be available at the time that the commission makes its findings. That disposition of high-level nuclear waste does not preclude the possibility of an approved process for retrieval of the waste.~~

~~(d) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division but shall not issue a decision pursuant to~~

~~Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals, or authorizations for the entry or use of the land, including orders of court, which may be required may be processed and granted by the governmental entity concerned, but construction work to install permanent equipment or structures shall not commence until the requirements of this section have been met.~~